

## REMARKS

### **I. Preliminary Amendments**

The amendments to the specification are introduced to conform the description of the drawings with the formal drawings, in which the panels were lettered and certain descriptive material was removed to simplify the appearance of those drawings for publication. No new matter has been presented.

For example, the three panels of Fig. 2 are now labeled as Fig. 2A, 2B and 2C, respectively, and the description thereof in the specification has been adapted to reflect this change. Similar changes were made for Figs. 3-8.

With respect to the descriptive material removed from certain drawings, that material been incorporated into the specification with the description of the corresponding drawings. For example, the sentences added to the description of Figs. 2 and 9, appeared on the originally-filed, informal versions of Figs. 2 and 9. Similarly, the changes in the description of Figs. 7-9 are from material found on the originally-filed, informal versions of those figures. In particular, these changes are the addition of "transmural" to Fig. 7, indication of "catheter injection" in Figs. 7-9, and the change of "with pacing" to "after adenosine" in Fig. 8 based on the material at the bottom left corner of the informal version Fig. 8.

Accordingly, Applicant believes these amendments are proper and respectfully request entry thereof.

### **II. Restriction Response**

In the requirement for restriction, Applicant was required to elect one of the following five (5) groups of invention:

- I. Claims 1-3, 15, 17, 19, 21, 36-40 and 52-54, drawn to a method of delivering an agent to an ischemic heart, classified in class 514, subclass 1;
- II. Claims 1-5, 15, 17, 19, 21, 23-28, 36, 38-42 and 52-54, drawn to a method of delivering a protein to an ischemic heart, classified in class 514, subclass 2;
- III. Claims 1-3, 6-11, 15-40, 43-44 and 46-48, drawn to a method of delivering a polynucleotide to an ischemic heart, classified in class 514, subclass 44;
- IV. Claims 1-3, 6, 8-11, 38, 45-48 and 52-54, drawn to a method of delivering an antisense polynucleotide to an ischemic heart, classified in class 514, subclass 44;
- V. Claims 1-3, 12-14, 15, 17, 19, 21, 38 and 49-54, drawn to a method of delivering cells to an ischemic heart, classified in class 424, subclass 93.1;

As indicated, and in order to be fully responsive to the Examiner's requirement for restriction, Applicant provisionally elects, with traverse, to prosecute the subject matter of Group I, Claims 1-3, 15, 17, 19, 21, 36-40 and 52-54, and reserves the right to file a divisional application directed to the non-elected subject matter of the remaining claims in this application.

This election is made with traverse because even though the claims of Groups I to V may be considered by the Examiner as patentably distinct from one another, it is firmly believed that the claims are sufficiently related to be properly presented in a single application. For example, the Examiner has acknowledged Claims 1-3 link the subject matter of the five groups and stated that the restriction requirement would be withdrawn upon allowance of those linking claims.

In this regard, the subject matter of Group I is based on a specifically delivering a therapeutic agent into the normal tissue of an ischemic or diseased heart. The subject matter of

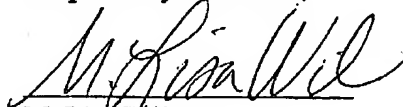
Groups II-V, calls for the same delivery method but provides that the therapeutic agent is a protein, a polynucleotide, an antisense polynucleotide or cells, respectfully. Accordingly, it is the common delivery method that links the present subject matter.

Given the commonality of the subject matter here, examination of all the claims does not place a serious search burden upon the Examiner.

Applicant additionally acknowledges the species election set forth for certain of the non-elected groups. Since the elected subject matter (Group I) did not require a species election, Applicant believes that a species election is not needed in this response.

If there are any issues outstanding after consideration of this election, the Examiner is invited to contact the undersigned to expedite prosecution of this case.

Respectfully submitted,



M. Lisa Wilson  
Reg. No. 34,045

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HALE AND DORR LLP  
300 Park Avenue  
New York, NY 10022

Direct No. (212) 937-7258  
Telephone: (212) 937-7200  
Facsimile: (212) 937-7300

Email: lisa.wilson@haledorr.com